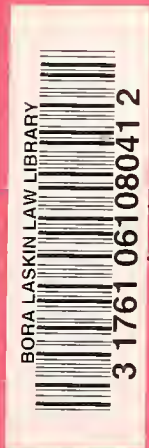




UNIVERSITY OF
TORONTO
FACULTY OF LAW



CLASS ACTIONS CASES, MATERIALS AND NOTES

(2 VOLUMES)

2008

VOLUME I

Prepared by Garry D. Watson, Professor of Law, Osgoode Hall Law School, York University

With the assistance of Derek McKay LL.B (OHLS Class of 2005), Now of Roy Elliott Kim O'Connor LLP

This is an abbreviated and modestly updated version of Professor Watson's Casebook edited by Professor Jacob Ziegel

FOR U of T STUDENT USE ONLY – NOT FOR OUTSIDE SALE

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PREFACE

The introduction of class actions laws and rules of court recognizing and facilitating class actions at the federal and provincial levels undoubtedly represents the most significant procedural change to have occurred in Canada over the past twenty five years and probably for a much longer period. As in other branches of the law, important procedural changes also bring in their train important substantive changes in the conduct of the parties most affected by the procedural changes or the laws governing their activities. The materials in this casebook are intended to cover the key aspects of class action litigation induced by the new legislation. Obviously, many details important from practitioners' points of view have had to be omitted or curtailed in the interests of time and space.

In working their way through the materials it is important for students to keep their eyes focused on the key issues raised by the class actions phenomenon. Here is a suggestive list of the issues:

- What were the cultural, legal and economic forces that persuaded most of the provinces and the Federal Court of Canada in the 1990s and early 2000s to adopt class action legislation and rules as a vehicle for facilitating and resolving claims common to members of a class?
- How do we assess the costs and benefits of class actions? Have class actions led to behavioral modifications by defendants who were successfully sued in such cases?
- How important is the role played by Canadian courts in class actions as compared with their roles in other cases? Do they merely play the role of neutral umpires in applying the new legislation or do judges' views on the costs of benefits of class actions also influence the outcome of individual cases?
- What is the impact of a multiplicity of provincial class action laws? Does it add an extra layer of complexity or is the position no different than in other branches of the law where provinces have adopted varying legislation? Does Canada need a national class actions law and, if so, who could bring this about and how?
- What can defendants do *ex ante* to avoid being sued in a class action? How far should the federal and provincial crowns be exposed to class action suits? Should they be treated differently from claims against other defendants?
- How do we explain the fact that most civil law jurisdiction and, within the common law world, the United Kingdom have so far declined to follow the North American class action model for the resolution of aggregate claims?

I am very grateful to Professor Garry Watson for permission to edit his excellent Class Action Casebook for use at the UoT and for his generous help generally to enable me to secure a handle

on the burgeoning jurisprudence and practitioner and scholarly writing in this dynamic branch of Canadian law. JSZ

November 12, November 18, Nov 20; JSZ Nov 26, SO Nov 27, Nov 30

MATERIALS FOR CLASS ACTIONS CASEBOOK

TABLE OF CONTENTS

VOLUME I

	Page
PREFACE	i
SELECTED BIBLIOGRAPHY (Only texts, not periodicals)	x
 <i>Chapter 1. EVOLUTION OF CLASS ACTION LAW</i>	
 A. <i>Common Law and Institutional Background</i>	
 <i>Naken v. General Motors of Canada Ltd.</i>	2
Bogart, "Naken, the Supreme Court & What Are our Courts For?"	23
Jacob Ziegel, "Consumer Protection in Canada and the Class Action Remedy"	28
 B. <i>Class Action Objectives</i>	
 Extract, Ontario Law Reform Commission, "Major Goals of a Class Action: An Evaluation"	42
 C. <i>Class Action Legislation</i>	
 <i>Class Proceedings Act, S.O. 1992 c. 6.</i>	61
<i>Ontario's CPA v. BC's CPA (and legislation in the other provinces)</i>	83
<i>A comparison between certification under the Ontario Class Proceedings Act and U.S. Rule 23</i>	87
<i>Certification In Quebec: A Special Case</i>	90
 D. <i>Impact of Canadian Legislation</i>	

Watson, “Class Actions: The Canadian Experience”	93
--	----

Chapter 2. REQUIREMENTS FOR CERTIFICATION

A. Identified Plaintiff

<i>Ragoonanan Estate v. Imperial Tobacco Canada Ltd.</i>	104 ✓
--	-------

B. Identifiable Class

<i>Bywater v. Toronto Transit Commission</i>	105
<i>Ragoonanan Estate v. Imperial Tobacco Canada Ltd.</i>	106
<i>Taub v. Manufacturers Life Insurance Co.</i>	120

C. Common Issues

<i>Caputo v. Imperial Tobacco Ltd.</i>	121
--	-----

D. Adequacy of Representation

<i>1176560 Ontario Ltd. v. Great Atlantic & Pacific Co. of Canada Ltd.</i>	126
<i>Reid v. Ford Motor Co</i>	131

E. Preferable Procedure

<i>Cloud v. Canada (Attorney General)</i>	133
---	-----

F. Supporting Affidavit Evidence

Watson, ‘What the SCC Said’	140 ✓
“Requirement and Use of Evidence on Certification,” from Garry D. Watson and Derek McKay, “More on Certification in the	140

post-Hollick World” (2004) Class Action Vol. II, No. 4

G. Cost Benefit Analysis: Superiority of Class Action Remedy

<i>Hollick v. Metropolitan Toronto (Municipality)</i>	150
<i>Rumely v. British Columbia</i>	163

H. Declaratory Class Actions

<i>Roach v. Canada (Attorney General)</i>	177
Garry Watson, Class Actions Not Needed To Secure Class-Wide Declaratory Relief for Breach of Statutory Duties	182

I. Ward Branch & R.L. Hayley, *An Insider’s Guide to Class Certification* 184

Chapter 3. CERTIFICATION BY TYPE OF CASE

A. Product Liability

Introductory Note	203
<i>Andersen v. St. Jude Medical Inc.</i>	205
Notes and Questions	225

B. Misrepresentation of Product or Service

<i>Mouhtheros v. DeVry Canada Inc.</i>	253
<i>Kumar v. Mutual Life Assurance Co. of Canada</i>	255
<i>Williams v. Mutual Life Assurance Co.</i>	256
<i>Collette v. Great Pacific Management Co.</i>	271

C. Systemic Negligence

<i>Egglestone v. Barker</i>	279
-----------------------------	-----

Chapter 4. CERTIFICATION BY TYPE OF CASE (CONT.)

A. Environmental Claims

<i>Pearson v. Inco. Ltd. (S.C.J.)</i>	297 ✓
<i>Pearson v. Inco. Ltd. (O.C.A.)</i>	337

B. *Securities Litigation*

Ward Branch, “Securities Class Actions in Canada: Haven or Hinterland”	365
<i>Carom v. Bre-X Minerals Ltd.</i>	373
A Note on Recent Amendments to the <i>Ontario Securities Act</i>	374
<i>Kerr v. Danier Leather Inc.</i>	375
Note on <i>In re. Nortel Corp. Securities Litigation</i>	376
Notes and Questions	377
John C. Coffee Jr. “Reforming the Securities Class Action: An Essay on Deterrence and its Implementation”	381
<i>Sutherland et al. v. The Hudson’s Bay Company et. al.</i>	388
<i>Potter v. Bank of Canada</i>	398 ✓

VOLUME II

Chapter 5. CONSUMER PROTECTION CLASS ACTIONS

Introductory Note	409
-------------------	-----

A. *Contractual Ambiguity, Contra Proferentem and the Politicization of Courts*

<i>Consumer Protection Act, 2002</i>	410
Recent Amendments to Ontario’s <i>Consumer Protection Act: Deeming Reliance for Misrepresentations Made to Consumers</i>	415
<i>Avery v. State Farm Mutual Automobile Insurance Company.</i>	415

B. *Automotive Replacement Part Litigation Salvage Cases*

Note on “Replacement Part Litigation” and Ontario	418
Introduction to the Ontario “Auto Salvage” Litigation: A Canadian Equivalent to <i>Avery</i> ?	419
<i>Segnitz v. Royal & SunAlliance Insurance Co. of Canada</i>	420

C. *Illegality – Criminal Interest Rate*

Introductory Note	423
Criminal Code, s. 347	425
An Act to Amend the Criminal Code. S.C. 2007, c. 9.	427

D. *Section 347 and Usurious Credit Card Charges*

<i>Markson v. MBNA Canada Bank</i>	428
------------------------------------	-----

E. *Payday Loans and Section 347*

Introductory Note	444
<i>McCutcheon v. Cash Store Inc.</i>	445
<i>Bodnar v. The Cash Store Inc.</i>	462

Chapter 6. CLASS ACTIONS AND MANDATORY ARBITRATION CLAUSES

Introductory Note	474
<i>Huras v. Primerica Financial</i>	475
Ontario's <i>Consumer Protection Act</i> Respecting "Arbitration Only" Clauses	482
The New <i>Consumer Protection Act</i> Provisions Respecting "Arbitration Only" and "No Class Actions" Clauses	484
Note: The New Approach of B.C. and Ontario Courts to the Arbitration Clause Issue	486
Summary, <i>Union des consommateurs c. Dell Computer Corp.</i>	489
Summary, <i>Muroff c. Rogers Wireless Inc.</i>	492
Mahmud Jamal "Consumer Class Actions and Arbitration: There is No Conflict"	493
Shelley McGill "A Comment on 'Consumer Class Actions and Arbitration: There is No Conflict'"	502
Arbitration Fairness Act of 2007 – 110 th Congress, 1 st session, S 1782	510
Lorne Sossin, "Class Actions Against the Crown"	514
Note on Exclusionary Powers of the Federal and Provincial governments	528

Chapter 7. SETTLEMENT OF CLASS ACTIONS AND COUNSEL'S FEES

A. *Introduction*

Susan P. Koniak, “The Plight of Absent Class Members Denied Adequate Representation”	531
William G. Horton & Barrie R. N. Attzs, “The Class Action Settlement: An Overview”	533
<i>Dabbs v. Sunlife Assurance Co. of Canada</i> (Summarized in Horton & Attzs)	

B. Caselaw

Summary, <i>McCarthy v. Canada Red Cross Society</i>	552
<i>2006 Summary of Class Action Settlements</i>	554

C. Remuneration of Counsel

Provisions of the <i>Ontario Class Proceedings Act</i> Respecting Fees	558
<i>Gagne v. Silcorp Limited</i>	561
<i>Directright Cartage Ltd. v. London Life Insurance Co.</i>	568
<i>Hislop v. Canada (Attorney General)</i>	570
Notes and Questions	578
<i>Wilson v. Servier Canada Inc.</i>	582

Chapter 8. COSTS, FEE SHIFTING AND CLASS ACTIONS

A. Introduction

Extract, Ontario Law Reform Commission’s “Report on Class Actions”	601
--	-----

B. Statutory Provisions

Ontario and B.C. Statutory Provisions	609
---------------------------------------	-----

C. Fee Shifting in Practice

Philip Anisman and Garry Watson, “An Overview of Costs (Fee Shifting) in	611
--	-----

Canadian Class Actions”	
Notes and Questions	614
<i>Pearson v. Inco Ltd.</i>	619
<i>Kerr v. Danier Leather Inc. (Ont. CA)</i>	624
<i>Kerr v. Danier Leather Inc. (SCC)</i>	625
Class Action and Third Party Financing: <i>Nantais</i> and the Australian Situation	628

Chapter 9. THE CHALLENGES OF NATIONAL CLASSES AND OVERLAPPING AND PARALLEL CLASS ACTIONS

Introduction – <i>Res judicata</i> basics	632
Ontario Class Proceedings Act s. 27	632
Garry Watson, “Res judicata and class proceedings”	633
<i>Currie v. McDonald’s Restaurant of Canada Ltd.</i>	636
<i>Ward v. Canada (Attorney General)</i>	651
Extracts from Craig Jones, “The Case for the National Class”	662
Notes and Questions	673
Parallel and Overlapping Class Actions (and Carriage Motions)	673
<i>Settlington v. Merck Frosst Canada Ltd.</i>	674
The ULCC’s Report on National Class Actions	681

Chapter 10. INTERNATIONAL AND COMPARATIVE PERSPECTIVES

Neil Andrews, “Multi-Party Proceedings in England: Representative and Group Actions”	704
Bernard Murphy, Camille Cameron, “Access to Justice and the Evolution of Class Action Litigation in Australia”	717
O. Faulk, “Armageddon Though Aggregation? The Use and Abuse of Class Actions in International Dispute Resolution”	729

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